IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 14962 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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BASIR ISAKBHAI MALEK

Versus

STATE OF GUJARAT

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Appearance:

1. Special Civil Application No. 14962 of 2004

MR NIRAV C THAKKAR for Petitioner No. 1

MR SP HASURKAR, AGP for Respondent No. 1-3

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CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 19/01/2005

ORAL JUDGEMENT

Rule. Mr.S.P.Hasurkar, learned AGP waives service of notice of rule on behalf of the respondents. At the joint request of the learned advocates appearing

for the parties, the petition is taken up for final disposal today.

2. In the present petition, the petitioner has challenged the notice dated 18.10.04 issued by the respondent No.3 calling upon the petitioner as to why penalty of dismissal from service should not be imposed on him and further as to why the period of suspension should not be treated as not having spent on duty.

3. Short facts leading to the present petition are that the petitioner who is working in the Police Department was issued a chargesheet on 13.3.02. Upon conclusion of the oral inquiry, the Inquiry Officer submitted report to the Disciplinary Authority. The Inquiry Officer concluded that the charges levelled against the petitioner are not proved. The Disciplinary Authority, however, by the impugned notice dated 18.10.04 gave elaborate reasons to come to the conclusion that the charges against the petitioner are proved. In fact, in the preamble to the show cause notice itself, it is stated that for the following reasons, the Disciplinary Authority holds that the charges against the petitioner as proved. In the concluding paragraph also the Disciplinary Authority repeated that in view of the above discussion, he holds the charges as proved. On the basis of these conclusions, the Disciplinary Authority issued the impugned show cause notice calling upon the petitioner why he should not be dismissed from service.

4. It is true that ordinarily this Court would not interfere at the interim stage of departmental proceedings. It is equally true that normally the Court would not interfere at the stage where the authorities have issued show cause notice and final decision is not yet taken. The facts of the present case, however, are peculiar. In so far as the decision of the Disciplinary Authority to disagree with the findings of the Inquiry Officer are concerned, such a decision has achieved finality and no further scope is left by the Disciplinary Authority in the show cause notice to permit the petitioner to make any representation which could convince the Disciplinary Authority to concur with the findings of the Inquiry officer to hold that the charges stand not proved. The Disciplinary Authority has unilaterally and without affording an opportunity to the petitioner come to a final conclusion that the charges are proved during the course of the inquiry. The only scope left with the petitioner is to make a representation with respect to the quantum of penalty. The course adopted by the Disciplinary Authority is

contrary to the settled legal position. In the case of Punjab National Bank v. Kunj Behari Mishra, AIR 1999 SC 2713, the Hon'ble Supreme Court held that if the Inquiry Officer holds that the charges against the delinquent are not proved and if the Disciplinary Authority desires to disagree with such a conclusion, it would be necessary for the Disciplinary Authority to record his tentative reasons and give an opportunity to the delinquent Government servant to make his representation in this regard. This view was reiterated by the Hon'ble Supreme Court in number of subsequent decisions including the case of Yoginath D. Bagde v. State of Maharashtra, AIR 1999 SC 3734. So far as the legal position is concerned, there is no debate possible. When the Inquiry Officer found that the charges against the petitioner are not proved and if the Disciplinary Authority desires to disagree with such findings, it was necessary for him to first record his tentative conclusions and tentative reasons in support of his conclusions and give an opportunity to the petitioner to make his representation as to why such view should not be adopted. The delinquent Government servant in such a case would not be entitled to insist for a separate show cause notice with respect to quantum of punishment. In the present case, however, the course adopted is exactly reverse of the legal requirement. The Disciplinary Authority has concluded that the charges against the petitioner are proved which conclusions are contrary to the findings of the Inquiry Officer and the said conclusions have been arrived at without giving an opportunity of being heard to the petitioner. The only opportunity available to the petitioner is to make submissions with respect to the quantum of punishment. In that view of the matter, the Disciplinary Authority has erred in law in issuing the said show cause notice. No useful purpose will be served in permitting the Disciplinary Authority to proceed further with the present show cause notice as even if the final decision to impose penalty on the petitioner is taken, the same would be tainted by illegality and would eventually fail to stand the test of law. In that view of the matter, at the stage of show cause notice, I find sufficient reason to interfere. It would also be in the interest of the administration since permitting the Disciplinary Authority to proceed further with the departmental proceedings at this stage on the basis of defective show cause notice would eventually result into some adverse consequences against the department also at a later stage.

5. In the result, in view of the above discussion, the impugned show cause notice dated 18.10.04 is quashed

and set aside. This, however, would not conclude the departmental proceedings against the petitioner and it will be open for the Disciplinary Authority to consider the entire matter and if found necessary to take further steps in accordance with law after issuing notice of disagreement with tentative reasons in support thereof and permitting the petitioner to make his representation in this regard. With these observations, rule is made absolute to the above extent with no order as to costs.

(Akil Kureshi, J.)
(vjn)